

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for April 26, 2006 PLANNING COMMISSION MEETING

PROJECT #: Miscellaneous No. 06001

PROPOSAL: Proposed Amendments to the Lincoln City-Lancaster County Planning Commission Rules and Procedures.

APPLICANT: Director of Planning at the request of the Lincoln-Lancaster County Planning Commission

ANALYSIS:

1. The proposed revisions to Rule 8 of the Planning Commission Rules and Procedures are submitted at the request of the Planning Commission as a result of the Zucker Systems report and recommendations. The remainder of the proposed revisions are merely clarifications or revisions reflecting how the Planning Commission has been conducting its business.
2. The substantive changes include:
 - 2.1 The proposed revisions to ***Rule 2: Filing of Applications*** reflect previous revisions to the Zoning Ordinance and Land Subdivision Ordinance allowing for the waiver of the preliminary plat process and adjusting the filing deadline to be the same for all applications. The deadline for filing applications is proposed to be changed from 4:00 p.m. to 12:00 Noon on the Thursday deadline.
 - 2.2 The proposed revisions to ***Rule 8: Presentation of Testimony*** are a direct result of the Zucker Systems Study recommendations, providing that the Planning staff make a brief presentation at the beginning of the public hearing summarizing the nature of the request, any relevant history, surrounding land uses and zoning, existing/planned infrastructure, staff recommendations and plans or policies supporting those recommendations. Paragraph #3 provides the staff an opportunity to rebut the public testimony prior to the applicant's rebuttal.
 - 2.3 The proposed revisions to ***Rule 9: Withdrawal or Deferral*** will allow the Planning Commission to vote upon requests for deferral after the Consent Agenda, but still call the application for public hearing at its location on the agenda. This gives the audience an opportunity to stay to give testimony when the item is called for hearing or opt to leave the meeting and return to give testimony at the new or continued public hearing.

- 2.4 The proposed revisions to **Rule 10: Action** clarify the procedure on motions to reconsider or rescind.
3. This proposal does not require a public hearing. However, the Planning Commission may wish to invite public testimony when the item comes up at the April 26th meeting.

Prepared by:

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DATE: April 6, 2006

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LINCOLN CITY-LANCASTER COUNTY PLANNING COMMISSION

Rules and Procedures

Rule 1. Meetings

The Commission will meet regularly on alternating Wednesdays and shall begin its meetings at 1:00 p.m. in the City Council Chambers of the County-City Building. As required by the Charter, five (5) members shall constitute a quorum for the transaction of business.

Rule 2. Filing of Applications

~~All applications for preliminary plats, community unit plans with a plat and final plats shall be filed with the Director of Planning no later than 4:00 p.m. five Mondays preceding date the applicant requests the matter to be placed on the Commission's agenda for public hearing.~~

~~— All applications for zoning matters (except community unit plan with a plat) shall be filed with the Director of Planning no later than 4:00 p.m. four Thursdays (27 days) preceding date the applicant requests the matter to be placed on the Commission's agenda for public hearing.~~

All ~~other matters~~ applications to be heard by the Commission shall be filed with the Director of Planning no later than 4:00 p.m. 12:00 Noon four Thursdays preceding the date the applicant requests the matter to be placed on the Commission's agenda for public hearing.

Rule 3. Notice

- 3.1 Legal notice of all matters to come before the Commission requiring such legal notice shall be given as required by law.
- 3.2 In addition, the Commission will endeavor to give written notice to owners of property affected by any proposed zoning changes instituted by the County Board, City Council, Planning Department or Commission. The notice shall be sent by regular U.S. mail at least ten (10) days before the date of the public hearing on such changes; ~~or as required by resolution of the County Commissioners.~~ In circumstances where too large an area is involved or too many people affected, effort will be made to inform the public through the news media.

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Rule 4. Procedures

Public hearing will be held on all matters on the Wednesday the matter is scheduled on the agenda. Action will be taken at that meeting if the Commission feels there are no outstanding facts requiring a continuance. Action will be taken at the conclusion of the Public Hearing on each item, except as provided for in Rule 5, below.

Rule 5. Agenda

An agenda of the matters to come before the Commission will be prepared by the Planning Director and mailed to all Commission members and known interested parties on the Thursday prior to the next scheduled meeting. Items not on the agenda will not be heard by the Commission unless a 2/3 majority of the Commission determines that an emergency exists and that the public interest dictates that the matter be heard.

There will be an addendum listing of items that are pending as a result of a ~~referral by the City Council or the County Board, or have been postponed~~ deferral from previous meetings, ~~or have been requested by the Commission for action but have not yet been placed on the agenda.~~

~~Applications dealing with community unit plans and plats will not be heard by the Commission unless the Planning staff has had an opportunity to discuss all questions with regard to such plat or community unit plan with the proponents thereof, and has received reports from other city and/or county departments.~~

The matters shall be heard in the order that the items appear on the agenda, however, ~~the Chairperson may adjust the order of the agenda unless a majority vote of the Commission in attendance~~ quorum present decide otherwise may rearrange the order of the agenda. In the event that an item which is set for public hearing is adjusted to an earlier time on the agenda, the public hearing will remain open at least until its previously scheduled time in order to assure an opportunity for all interested persons to present testimony. ~~Upon a majority vote of the Commission members (5 votes) an item which has not previously been placed on the agenda shall be included on the agenda of the next regularly scheduled meeting.~~

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Rule 6. Consent Agenda

The Planning Director shall prepare a Consent Agenda comprised of those matters upon which there is consent as to request and recommendation and which shall be listed as the first item on the agenda. The Consent Agenda may be voted upon in total at the same meeting. Any item on the Consent Agenda shall be removed by the Chairperson if there is a request to speak on the matter or at the request of a Commission member. Items removed from the Consent Agenda will be placed as the second item on the agenda and will be voted on at the same meeting, provided it is not continued to another date.

Rule 7. Nature of Testimony

The role and function of the Commission is to advise the legislative and administrative branches of government concerning planning matters and to take final action upon those applications where the Planning Commission has final action authority. Testimony before the Commission should be relative to the planning aspects of the matter being heard. A written statement supporting or opposing an agenda item may be submitted to the Commission as a part of the public hearing in order to be included as a part of the public hearing minutes.

A copy of Rules 4, 5, 6, 7 and 8 should be distributed to each applicant to appear before the Commission at the time of mailing the agenda to the applicants.

The Commission may ask questions of persons testifying. There shall, however, be no cross-examination or direct questioning in front of the Commission between proponents and opponents. All questions and testimony shall be directed to the Commission.

Material and testimony submitted should be as factual as possible.

Rule 8. Presentation of Testimony

1. The planner handling the application will briefly summarize the nature of the request, any relevant history, surrounding land uses and zoning, existing/planned infrastructure, staff recommendations and plans or policies supporting those recommendations.

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2. The applicant will be requested to present his/her testimony ~~first~~ next. The applicant, or his/her representative shall first state his/her name and address and if the party appearing is not the applicant, the nature of his/her representative capacity. The applicant or representative should state as succinctly as possible:
 - A.1. Why the applicant desires the action requested.
 - B.2. Why the application is in accordance with sound planning practices.
3. Following the applicant's testimony, other persons wishing to speak on that particular agenda item will be called upon to present testimony in the following order:
 - A.(1) Proponents of the application;
 - B.(2) Opponents of (or those seeking information about) the application; ~~and~~
 - C. The planner handling the application or other staff assisting the Commission may make brief comments on the testimony and respond to questions; and
 - D. Rebuttal by the applicant.

Each person should first state their name and address. Such individual should then present his or her reasons why the application is or is not in accordance with sound planning practices.

The Commission shall attempt to provide a proportionally equal time for presenting testimony to an application for both proponents and opponents.

Five (5) minutes for testimony is preferred as a maximum; however, no more than 30 minutes should be taken by either proponents or opponents. The Chairperson may grant additional time in advance of the meeting for items of major significance. Speakers may request more time and the Commission may grant or deny such requests.

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It is requested that large groups in attendance concerned with an application choose one or two spokespersons to present the group's testimony. The spokesperson may have the group stand to give the Commission an idea of the number of persons sharing similar viewpoints. It should be recognized, however, that the Commission is interested in factual information.

Individual speakers for themselves and also groups' spokespersons should not present testimony previously given. The Chairperson of the Commission shall reserve the right to discontinue at any time repetitious or irrelevant testimony.

A sign-in sheet may be circulated in order that persons in attendance may indicate their desire to testify or merely indicate their position on an application.

Rule 9. Withdrawal or Deferral

Any matter which has been advertised for public hearing and final action may be withdrawn ~~or deferred~~ prior to preparation of the agenda on the Thursday before the Commission meeting. ~~Once the agenda has been prepared, items may be withdrawn with the approval of the Chairperson or Vice Chairperson if the Chairperson is out of town or unavailable.~~ Any other matter which has been advertised for public hearing may be withdrawn at any time.

Immediately following the Consent Agenda, the Planning Commission will take up any written requests for deferrals which have been made prior to the scheduled and advertised public hearing. In the event that an item which is set for public hearing is deferred at this time, the public hearing will remain open at least until its previously scheduled time on the agenda in order to assure an opportunity for all interested persons to present testimony.

If applicants request deferrals after written notice of the public hearing has been mailed, the property has been posted, then such deferral shall be for a period to be determined by the Chairperson, however, a majority vote of the Commission quorum present may determine a different deferral period. The vote on the request for deferral may be taken prior to requesting testimony on the application.

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Rule 10. Action

As required by the Charter, five affirmative votes are required for action on the main motion ~~for final action~~ on any matter. "Final ~~a~~Action" is defined as any vote on a main motion which results in a favorable or unfavorable disposition of any agenda matter. All subsidiary votes and procedural votes, such as amendments, additions, and/or deletions, may be determined by the majority vote of the quorum present at any meeting.

If, due to the absence of one or more members of the Commission, a vote on final action the main motion on a matter not receiving fails to receive five or more votes either for or against, said matter shall be deemed to have received neither approval nor disapproval and shall, without further order of the Commission, be continued from regular meeting to regular meeting and voted upon once at each such meeting until such time as it shall receive five votes either for or against.

The Commission may vote at the same meeting to reconsider or rescind that action if a motion to do so is made by a Commissioner who voted on the prevailing side of the action and approved by five affirmative votes of the Commission. If an action is rescinded or reconsidered, the Commission may proceed immediately to consider new motions on the application.

Rule 11. Special Meetings

Special meetings of the commission may be called by the Chairperson, Vice Chairperson or three members of the Commission.

Rule 12. Suspension of Rules

Any and all rules may be suspended by five affirmative votes of the Commission.

Rule 13. Amendment of Rules

These rules may be amended by five affirmative votes of the Commission.

Rule 14. Election of Chairperson and Vice Chairperson

A majority of the Commission (5 votes) shall elect a Chairperson and Vice Chairperson for two-year terms each August of odd-numbered years. In the event of a vacancy by either the Chairperson or Vice Chairperson, a majority of the Commission (5 votes) shall

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elect a replacement to fill the unexpired term at the next regular meeting. Should the Vice Chairperson be elected to fill the unexpired term of the Chairperson, a majority of the Commission (5 votes) shall thereupon, immediately elect a replacement for the Vice Chairperson.

In the event of a vacancy by the Chairperson, the Vice Chairperson shall act as the Chairperson until a replacement is elected.

In the event of a temporary absence by the Chairperson, the Vice Chairperson will act as the Chairperson during such absence.

In the event that both the Chairperson and the Vice Chairperson are temporarily absent, the Chairperson may appoint a temporary Chairperson. In the event that the Chairperson has not appointed a temporary Chairperson, the Planning Director shall call the meeting to order for the purpose of electing a temporary Chairperson. A majority of the members present shall elect the temporary Chairperson.

Either the Chairperson or the Vice Chairperson may be removed from office by a 2/3 majority vote of the entire Commission prior to the expiration of the regular term.

Rule 15. Vote of Member Mandatory; Exceptions.

Every member of the Commission ~~who shall be present when a question is put,~~ shall give his or her vote.

Exception 1. Conflict of Interest. If such member has a conflict of interest on the pending question, he or she shall refrain from voting thereon, unless their vote is needed to obtain the required five affirmative votes, and shall file an official conflict of interest form with the City Clerk and with the Nebraska Accountability and Disclosure Commission.

Exception 2. Right of Abstention. If such member believes he or she has an appearance of partiality on the pending question, such member may abstain from voting thereon unless such vote is necessary to obtain the required five affirmative votes for final action.

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Exception 3. Right to Abstain on Approval of the Minutes. If such member did not attend a meeting, such member may abstain from voting on the question of whether the minutes of said meeting should be approved unless their vote is needed to obtain the required five affirmative votes.

Rule 16.

Except as otherwise specifically set out herein, all business before the Commission shall be conducted in accordance with Roberts Rules of Order.

Rule 17. "Ex Parte" Communications

The Planning Commission has now been given more authority in certain situations and the advisory role has been converted to an administrative, legislative or quasi-judicial role, i.e. use permits, special permits, final plats.

With quasi-judicial actions, the requirements of procedural due process necessitate a fair hearing before a reasonably impartial body. Any decision must be based upon what is in the official public record. Ex parte communications could create legal problems if the courts feel that the ex parte contacts have biased the commission holding the hearing.

Ex parte communications are defined as talking, either in person or by phone, to a commission member when the other side is not present or presenting information to the member which the other side does not receive.

Many hearings before the Planning Commission are legislative and strictly advisory in nature. Though not quasi-judicial, these hearings should also be conducted in a fair manner. Everyone should be operating on the same base of information in making a decision.

The Planning Commission recognizes that the prevention of ex parte communications may be impossible. In order to do our best to insure a fair and open hearing and decision making process, the Planning Commission will use the following protocol when involved in contacts with the public outside of the public hearing:

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1. Keep such contacts to a minimum in those areas of concern, especially when the issue involves final action by the Planning Commission.
2. If there are ex parte contacts with the applicant or opponent that result in new information, such contacts and the information should be disclosed on the record to give the other side the opportunity to refute. After a public hearing is closed, such contacts should be kept to a minimum.
3. On ~~final action~~ items that are likely to generate a request to defer the vote for additional information or continued discussion between the hearing and the vote, the Commission should ~~consider~~ continueing the public hearing.
4. The Commissioners will request that comments or additional information be put in writing and sent to the Planning Department for distribution to all Commissioners and the applicant and his/her representative.
5. Commissioners may contact staff to ask questions about upcoming applications. Staff shall endeavor to send written responses to all Commission members and applicants/representatives before the hearing, in addition to presenting the information at the hearing.